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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/692,698	10/23/2003	John E. Bennett	DE012	9786

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EXAMINER

CAMPBELL, KELLY E

ART UNIT	PAPER NUMBER
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3618

DATE MAILED: 03/28/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/692,698

Applicant(s)

BENNETT ET AL.

Examiner

Kelly E Campbell

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 10-39 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 10-39 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. ____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Claim Objections

The numbering of claims is not in accordance with 37 CFR 1.126 which requires the original numbering of the claims to be preserved throughout the prosecution. When claims are canceled, the remaining claims must not be renumbered. When new claims are presented, they must be numbered consecutively beginning with the number next following the highest numbered claims previously presented (whether entered or not).

Applicant has submitted claims 1-8 and 11-39. Claim 9 was omitted.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 20-39 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 20-39 repeatedly reference multiple elements by the term "frame".

In Claim 20, "frame" refers to a wheel chair frame. In claim 29, depending from claims 28 and 20, "frame" refers to a riser seat frame.

It is unclear when the applicant uses the term "frame" in these claims, which elements are being disclosed. A correction must be made.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1-8,11,13,15/13,16-18 and 34 are rejected under 35 U.S.C. 102(b) as being anticipated by Bloswick (US 5,513,867).

Bloswick teaches an adjustable height seat including:

a wheel chair frame (12) having a back (14), front (16) and two sides (18);

a telescoping support (60) inclined away from the vertical towards the front (16) and mounted to the chair frame, a seat (40) supported on the telescoping support (60), a spring (48) normally urging the telescoping support towards an elevated condition, see Column 3, lines 20-25;

the telescoping support mounted on riser seat frame (45,62);

the telescoping support being operative for raising and lowering the seat (40) relative to the chair frame (12) responsive to the repositioning of a user's weight on the seat, see Column 5, lines 65-67 and Column 6, lines 1-14;

the telescoping support having upper member (68) receiving the seat (40) and telescopically slidable relative to and within a lower member (66);

wherein the seat (40) is depressed to a lowered position when the user's body assumes a reclined position and the body weight overcomes the spring (48), see Column 6, lines 31-45;

the telescoping support being attached via bolts and thus quite capable of being removed;

With regards to the telescoping support "frictionally arrested against substantial movement", if a user quickly "backs into" the seat bottom (40), the telescoping assembly will be subjected to a bending-type force, and the upper telescoping member (68) will be forced against the lower telescoping member (66) frictionally.

Also, wherein if the riser telescoping assembly were removable, the seat (40) would thus become a non-riser seat, in the absence of the riser telescoping assembly.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over Blowski (US 5,513,867) as applied above, and further in view of Paul (US 5,011,224).

Paul teaches a gas spring (60) for biasing a riser seat (18) in the elevated position.

It would have been obvious to one of ordinary skill in the art to modify the riser seat of the wheelchair taught by Bloswick to include a gas spring configuration as taught by Paul, for biasing the seat, since it is well known in the art, that coil springs and gas springs would be art recognized equivalents and the selection of any of these known equivalents would be within the level of ordinary skill in the art.

Claim 10,14,15/14,19-26,28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bloswick (US 5,513,867) as applied above, and further in view of Watkins (US 6,345,835).

Bloswick teaches all aspects of the claimed invention including, referring to Figure 6, a folding wheelchair having left and right sub assemblies and having a scissor arrangement (Figure 6) including cross braces connecting sub assemblies and joined for scissor movement. .

Watkins teaches a folding wheel chair including a seat bottom (140) and seat back (118) , see Figure 1;

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a separate seat bottom and “removable” seat elevation assembly as taught by Bloswick et al, for the folding wheelchair assembly as taught by Watkins, in order to provide assistance to a user, unable to stand or sit comfortably on their own.

With regards to claim 10, it would have been obvious to one of ordinary skill in the art to modify the telescoping members to be rectangular in cross section, since such a modification would have involved a mere change in the shape of a component.

A change in shape is generally recognized as being within the level of ordinary skill in the art.

Allowable Subject Matter

Claims 27,29-33 and 35-39 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, 2nd paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

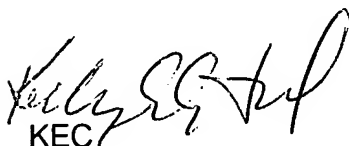
The following is a statement of reasons for the indication of allowable subject matter: The prior art of record does not disclose the combination of a folding wheel chair having a removable riser seat frame formed of adjustable longitudinal beams and transverse supports and hanger brackets for suspending the frame from wheel chair sub assemblies, such that the riser seat is operative by a telescoping support and spring assembly responsive to the repositioning of a user's body weight.


Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kelly E Campbell whose telephone number is (703) 605-4264. The examiner can normally be reached on 9:00-5:30 Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on (703) 305-0168. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


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